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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR		ATTORNEY DOCKET NO.
09/324,465	06/02/99	GLUCKSMANN	M	5800-2A

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  000826                  HM12/0403
  ALSTON & BIRD LLP
  P O DRAWER 34009
  CHARLOTTE NC 28234-4009
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	EXAMINER
	WANG, A

ART UNIT	PAPER NUMBER
1635	6

DATE MAILED: 04/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

	Application No.	Applicant(s)
Office Action Summary	09/324,465	Glucksman et al.
	Examiner Andrew Wang	Group Art Unit 1635

☒ Responsive to communication(s) filed on _Aug 30, 1999_ .

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____1_____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) _1-20_____ is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims _1-20_____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

    I. Claim 1, drawn to an isolated polypeptide, classified in class 530, subclass 350.

    II. Claims 2, 9-14, and 18-20, drawn to an antibody and a protein detection assay, classified in class 435, subclass 7.1.

    III. Claims 3-8, drawn to an isolated nucleic acid which encodes for a peptide, a vector comprising said nucleic acid, a host cell comprising said vector, and a method of producing a polypeptide, classified in class 435, subclass 69.1.

    IV. Claims 15-17, drawn to a method of hybridization, classified in class 435, subclass 6.

2. The inventions are distinct, each from the other because of the following reasons:

    Inventions I and II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not related since each product is used in materially different methods.

Inventions III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not capable of use together since the method of recombinantly producing a polypeptide requires materially different method steps.

Inventions I-II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not capable of use together since polypeptides and antibodies cannot be used in nucleic acid hybridization assays.

3.   Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4.   Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the

fee required under 37 CFR 1.17(I).

5.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Wang whose telephone number is (703) 306-3217. The examiner can normally be reached on Monday to Thursday from 7:00 a.m. to 5:00 p.m.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Elliott, can be reached on (703) 308-4003. The fax phone number for this Group is (703) 308-4242.

        Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Andrew Wang
March 31, 2000